SUPREME COURT, U. S.
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MICHAEL RODAK, JR., CLERK

No. 75-374

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1975

Rita F. Warren,
Petitioner

v.

Joseph E. Killory,

individually and in his capacity as Superintendent of Schools, City of Brockton, Commonwealth of Massachusetts
and

James L. Green,

individually and in his capacity as Chairman, School Committee, City of Brockton, Commonwealth of Massachusetts,
Respondents

PETITION FOR REHEARING OF ORDER ON PETITION FOR WRIT OF CERTIORARI

Leon Aronson
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Attorney for Petitioner

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RITA F. WARREN
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Vs.

JOSEPH E. KILLORY, ET AL
Respondents

PETITION FOR REHEARING OF ORDER ON
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Petitioner respectfully requests that this Court grant rehearing of its Order dated November 3, 1975, which denied Certiorari, and that the Court now grant Certiorari.

The petition for Certiorari previously filed herein presented the following questions:

1. Whether audible prayer by a single student or small group of students voluntarily conducted in a public school facility at a time that does not interfere with the school program, and without teacher participation or involvment of either school or church officials, is prohibited by the establishment clause of the First Amendment, as applied to the States by the Fourteenth Amendment.

2. Whether the absolute prohibition, by school officials, of voluntary oral prayer by a student, or small group of students, in a public school facility, at a time that does not interfere with the school program, is violative of the First Amendment guarantees of free

exercise of religion and freedom of speech as applied to the States by the Fourteenth Amendment.

The petition for Certiorari, however, did not, and, on the basis of the record presented, should have raised the following question:

Whether the absolute refusal of school officials to tolerate voluntary oral prayer by a student, or small group of students, conducted without teacher participation, or involvment of religious instructors, at a time which does not interfere with the school program transends the concept of state neutrality toward religion, and, in fact, demonstrates a hostility toward religion which is tantamount to an establishment of a religion of secularism or atheism in violation of the establishment clause of the First

Amendment as applied to the States by the Fourteenth Amendment.

Petitioner respectfully submits that it is imperative that the aforementioned question be reviewed by this Court insofar as public school officials, such as Respondents herein, have, relying upon the authority of Engel v. Vitale, 370 U.S. 21, 82 S.Ct. 1261,8 L. Ed. 2d 601 (1962) and Abington School District v. Schempp, 374 U.S. 203, 83 S.Ct. 1560, 10 L.Ed. 2d 844 (1963), exhibited hostility towards any and all types of religious expression in school and thereby demonstrated a preference towards those who believe in no religion. Such preference is in direct violation of the dictates of this Court.

In Zorach v. Clauson, 343 U.S. 306, 72 S. Ct. 679, 96 L. Ed. 954 (1952),

Mr. Justice Douglas stated at 313 - 314:

> "We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses... When the State encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our tradition. For it then respects the religious nature of our people and accomodates the public service to their spiritual needs. To hold that it may not would be to find in the Constitution an indifference to religious groups. That would be preferring those who believe in no religion over those who do believe." (Emphasis Added)

In Schempp, supra, Mr. Justice Clark stated at 225:

> "[T]he State may not establish a 'religion of secularism' in the sense of affirmatively opposing or showing hostility to religion, thus 'preferring those who believe in no religion over those who do believe.'"

Although this Court, in Schempp, concluded that its decision proscribing the organized program of daily readings from the Bible and recitation by students in unison of the Lord's Prayer

in the classroom did not constitute hostility toward religion or the establishment of a "religion of secularism "; petitioner respectfully submits that a refusal to accomodate the spiritual needs of students, by the mere tolerance of self-initiated voluntary oral prayer, should be considered reflective of government hostility towards religion and an establishment of the religion of secularism or agnosticism in contravention of the establishment clause of the First Amendment. Schempp, petitioner submits, is not dispositive of the question raised herein. Therefore, it is a matter of first impression which should be reviewed and definitively determined by this Court.

CONCLUSION

For the reasons set forth in this Petition for Rehearing as well as in the Petition for Certiorari previously filed, Rehearing and Certiorari should now be granted.

Respectfully Submitted

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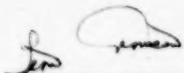
Attorney for Petitioner

CERTIFICATE OF COUNSEL

Pursuant to Rule 58, I hereby certify that the foregoing Petition for Rehearing is presented in good faith and not for delay and is restricted to the grounds specified in Paragraph 2 of Rule 58.



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